Zainuddin bin Muhammad v Atsco Ltd & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W–02–840 OF 2000

GOPAL SRI RAM, DENIS ONG AND KC VOHRAH JJCA

6 JULY 2001

Civil Procedure *— Contempt of court — Breach of court order — Extension of time to comply with order, whether time was of the essence — Sentence to be imposed*

This was an appeal by the appellant against the sentence on three months imprisonment by the High Court. The appellant was charged and found guilty of offending a court order. The order was made on 12 March 1999 requiring the appellant to render a full and true account of all his assets within seven days from the service of the order. The appellant did not obey the order within the time stipulated. In any event, the order was superseded by a consent order made on 24 August 2000 which allowed the appellant a further seven days from the date of this second order to deliver his affidavit of assets. Counsel for the respondents submitted that the sentence of three months was reasonable because there was contumelious disregard of the first order. Counsel further complained about the general conduct of the appellant in which he moved his money about despite there being an injunction operating against him.

Held, allowing the appeal, setting aside the sentence and issuing a warning against the appellant:

(1) There was no dispute that the appellant did not obey the order made on 12 March 1999. However, counsel overlooked the second consent order which extended time. Therefore the time within which the appellant was required to declare his assets was no longer of the essence. What was the essence was whether he did in fact deliver an affidavit of his assets. And of that there was no doubt. He did (see p 715C, E–F).

(2) The charge against the appellant in its substance said that the appellant did not comply with the first order. There were no complaints about other types of misconduct. So it would not be in order for the court to consider these extraneous matters in the present case. They must be dealt with on the other motion now pending before the High Court (see p 715G–H).

(3) The justice of the case was not met by sending the appellant to prison. What was of importance was that the respondents had received what they wanted. A declaration of assets. No purpose was served by sending this man to prison (see p 716A). The sentence was therefore set aside and a warning imposed instead (see p 716B).

[Bahasa Malaysia summary

Ini adalah satu rayuan oleh perayu terhadap hukuman tiga bulan penjara oleh Mahkamah Tinggi. Perayu telah dituduh dan didapati bersalah kerana melanggar satu perintah mahkamah. Perintah tersebut telah dibuat pada 12 Mac 1999 menghendaki perayu untuk memberikan satu penyata penuh dan benar tentang semua aset beliau dalam tempoh tujuh hari daripada penyampaian perintah tersebut. Perayu tidak mematuhi perintah tersebut dalam tempoh yang ditetapkan. Dalam apa keadaanpun, perintah tersebut telah digantikan oleh satu perintah persetujuan yang dibuat pada 24 Ogos 2000 yang membenarkan perayu lanjutan tujuh hari daripada tarikh perintah kedua ini untuk menyerahkan afidavit aset-aset beliau. Peguam bagi pihak responden-responden menghujahkan bahawa hukuman tiga bulan penjara tersebut adalah munasabah kerana terdapat sikap tidak mengendahkan terhadap perintah pertama tersebut. Peguam selanjutnya mengadu tentang perbuatan umum perayu di mana beliau telah mengalih-alihkan wang beliau meskipun terdapat injunksi yang beroperasi terhadap beliau.

Diputuskan, membenarkan rayuan tersebut, mengetepikan hukuman dan mengeluarkan satu amaran terhadap perayu:

(1) Tiada pertikaian bahawa perayu tidak mematuhi perintah yang dibuat pada 12 Mac 1999. Namun begitu, peguam telah terlepas perhatian tentang perintah persetujuan kedua yang melanjutkan masa. Oleh itu masa di mana perayu dikehendaki mengisytiharkan aset-aset beliau tidak lagi penting. Apa yang penting adalah sama ada beliau sememangnya menyerahkan afidavit aset-aset beliau. Dan ini tidak diragui. Beliau telah berbuat demikian (lihta ms 715C, E–F).

(2) Pertuduhan terhadap perayu pada amnya menyatakan bahawa perayu tidak mematuhi perintah pertama tersebut. Tiada aduan tentang lain-lain jenis salah laku. Oleh itu ia tidak mungkin betul bagi mahkamah mempertimbangkan perkara-perkara tidak berkaitan tersebut di dalam kes sekarang ini. Ia mestilah dibincangkan dengan usul lain yang sekarang ini belum selesai di hadapan Mahkamah Tinggi (lihat ms 715G–H).

(3) Keadilan kes ini tidak boleh diukur dengan menghantar perayu ke penjara. Apa yang penting adalah responden-responden telah dapat apa yang mereka hendaki. Satu deklarasi aset-aset. Tiada tujuan telah disampaikan dengan menghantar lelaki ini ke penjara (lihat ms 716A). Hukuman tersebut oleh demikian diketepikan dan satu amaran dikenakan sebaliknya (lihat ms 716B).]

Notes

For cases on breach of court order, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1090–1091.

Appeal from: Civil Suit No D5–596 of 1999 (High Court, Kuala Lumpur)

Cecil Abraham (*K Kirubakaran, G Rajasingam* and *Paul Chua* with him (*Kiru & Yong*) for the appellant.

K Anantham (*K Gowri* with him) (*Skrine & Co*) for the respondents.

Gopal Sri Ram JCA. (delivering the judgment of the court): This appeal concerns a very short point. It is of no great moment. The appellant is 68 years old. The High Court found him guilty of offending an order of court. It sentenced him to three months imprisonment. The appellant appealed to us. We heard his appeal on 16 May 2001. We upheld his conviction, but we set aside his sentence. Instead of a term of imprisonment, we discharged him with a warning.

The order in question was made on 12 March 1999. It required that the appellant, within seven days from the service of the order, render a full and true account of all his assets. There is no dispute that the appellant did not obey the order within the time therein limited. He was 40 days late. That is because he prevaricated. But he eventually he did render a true account of all his assets. In any event the order of 12 March 1999 appears to have been superceded by a consent order made on 24 August 2000 which allowed the appellant a further seven days from the date of this second order to deliver his affidavit of assets.

Now, Mr Anantham of counsel for the respondents submitted that the sentence of three months was reasonable because there was contumelious disregard of the first order of 12 March 1999. That may have been the case, but counsel overlooks the second consent order which extended time. So, in my view, the time within which the appellant was required to declare his assets was no longer of the essence. What was of the essence was whether he did in fact deliver an affidavit of his assets. And of that there is no doubt. He did.

Mr Anantham then complains about the general conduct of the appellant. The way in which he moved his money about despite there being an injunction operating against him. Now there may be a great deal to be said about these matters. But I do not think that we ought to be concerned with it. The gravamen of the charge against the appellant appears in the statutory statement lodged in support of the contempt application. In substance it says that the appellant did not comply with the order of 12 March 1999. There are no complaints about other types of misconduct. So it would not be in order for us to consider these extraneous matters in the present case. They must be dealt with on the other motion now pending before the High Court. That is where I think the judge went wrong. He seems to have been much moved by Mr Anantham's argument that the appellant had moved monies despite a freeze upon them. But that, as I have earlier said, is not the essence of the charge here.

That brings me to the sentence. I ask myself the question whether the sentence passed by the learned judge accords with the justice of the case. It would do so if the effect of the sentence were to uphold the sanctity of the

order in court in question and to demonstrate to other offenders the seriousness of wilful disobedience of an order of court. In my view, in all the circumstances, the justice of the case is not met by sending the appellant to prison. What is of primary importance is that the respondents have got what they wanted. A declaration of assets. No purpose is served by sending this man to prison. In my judgment, the sentence passed is manifestly excessive having regard to all the facts here. Hence, I came to the conclusion, concurred that a warning would suffice. The sentence was therefore set aside and a warning imposed instead. The appellant was, however, ordered to pay all the costs in this court. It was also ordered, with no objection being registered on the appellant's part, that his bail security of RM20,000 be escheated to the respondents towards their costs. We also ordered that they be issued a certificate for two counsel in the respondents' favour.

Appeal allowed, sentence set aside and a warning issued against the appellant.

Reported by Zahid Taib